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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Freddy N., a Person Coming Under the  
Juvenile Court Law.

B163196

(Super. Ct. No. KJ20487)

THE PEOPLE,

Plaintiff and Respondent,

v.

FREDDY N.,

Defendant and Appellant.

APPEAL from the judgment of the Superior Court of Los Angeles County. Jerry Moore, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed and remanded.

Steven A. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Margaret E. Maxwell and Marc A. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

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Minor Freddy N. appeals from the court's judgment sustaining a Welfare and Institutions Code section 602 petition against him and committing him to the California Youth Authority. We modify the judgment and remand for resentencing.

## **FACTS AND PROCEDURAL BACKGROUND**

In the early morning hours of September 16, 2002, 17-year-old Freddy N. and a friend took a car without the owner's permission. After appellant's friend drove the car for about a mile, they abandoned it. Shortly thereafter, police arrested appellant and his friend.

The People filed a petition under Welfare and Institutions Code section 602 charging appellant with unlawfully taking or driving a vehicle (Veh. Code, § 10851, subd. (a)) and receiving stolen property (Pen. Code, § 496, subd. (b)). The juvenile court sustained the petition and committed appellant to the California Youth Authority for a period not to exceed three years. This appeal followed.

## **DISCUSSION**

### **1. Remand for Resentencing**

Illegally taking or driving a car is a "wobbler," meaning it can be either a felony or misdemeanor. (Veh. Code, § 10851, subd. (a).) When a juvenile court finds a minor committed a wobbler, the court must explicitly declare whether the offense is a felony or misdemeanor. (Welf. & Inst. Code, § 702; *In re Manzy W.* (1997) 14 Cal.4th 1199, 1204.) The court made no such declaration here. Moreover, the court's imposition of a felony sentence, which would ordinarily allow us to infer the court deemed the offense a felony, does not satisfy the requirement of an express declaration. (*In re Manzy W.*, *supra*, at p. 1209; *In re Eduardo D.* (2000) 81 Cal.App.4th 545, 549.) Appellant contends we must therefore remand his case to allow the juvenile court to make its declaration and to resentence accordingly. (*In re Manzy W.*, *supra*, at p. 1210.) The People concede appellant is correct. Accordingly, we will do so.

## 2. Must Dismiss Receiving Stolen Property Conviction

The court found appellant had both unlawfully taken the car and received it as stolen property. Appellant contends both convictions cannot stand; he can either have taken, or received, the car, but not both. (*People v. Jaramillo* (1976) 16 Cal.3d 752, 757; Pen. Code, § 496, subd. (a) [“no person may be convicted both [of receiving stolen property] and of the theft of the same property”]; accord *People v. Cratty* (1999) 77 Cal.App.4th 98, 103.) The People concede appellant is correct, and agree that his conviction for receiving stolen property must be dismissed.

### **DISPOSITION**

Appellant Freddy N.’s conviction for receiving stolen property is dismissed. The matter is remanded to the juvenile court for the court’s express declaration whether appellant’s unlawful taking of another’s vehicle was a felony or misdemeanor, and for the court to resentence based on its declaration.

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RUBIN, J.

We concur:

COOPER, P.J.

BOLAND, J.